

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates For Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”), pursuant to the Public Notice released on August 27, 2012 (DA 12-1405), hereby respectfully submits its comments on the Petition for Reconsideration and Clarification filed by the United States Telecom Association (“USTelecom”) in the above-captioned proceedings. Sprint agrees with USTelecom that the recently issued guidance relating to Tribal Government Engagement¹ appears to be overbroad. The Commission should clarify that such guidance is recommended rather than prescriptive, and that it is applicable only to carriers that are designated by a Tribal

¹ *Connect America Fund et al.*, Public Notice released July 19, 2013 (DA 12-1165) (“*Further Guidance PN*”).

Government as Tribal ETCs and that provide broadband service to a Tribal land in association with their receipt of Connect America Fund (“CAF”) or Tribal Mobility Fund support.

1. Background

In the *ICC/USF Transformation Order*, the Commission adopted rules requiring ETCs “either currently providing service or contemplating the provision of service on Tribal lands” to certify annually that “they have meaningfully engaged with Tribal governments in their supported areas.”² The FCC Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and the Wireline Competition Bureau (collectively, “the Bureaus”) subsequently issued further guidance on the Tribal Government engagement obligation, urging, among other things, “actual live conversations” between “decision makers,” with ETC representatives prepared to “articulate their deployment priorities, the process by which they arrived at these priorities, and their initial plans for deployment on Tribal lands.”³ Both sides are encouraged to “coordinate their feasibility and sustainability planning,” and to discuss “the tailoring of service offerings to the community through, for example, the feasibility of a local presence in the community,” as well as “rights-of-way and other permitting and review processes on Tribal lands.”⁴ The service provider “should have documentation of any and all [rights-of-way, land use permitting, facilities siting, and environmental and cultural review] processes with which they currently comply.”⁵

² *Connect America Fund et al.*, 26 FCC Rcd 17663, 17868-69 (para. 637) (2011). As codified in Section 54.313(a)(9) of the Commission’s Rules, however, this reporting requirement only applies “to the extent the recipient serves Tribal lands.”

³ *Further Guidance PN*, paras. 9-19.

⁴ *Id.*, paras. 25-27.

⁵ *Id.*, para. 27.

As an initial matter, Sprint would emphasize that it supports the goal of extending broadband service to Tribal lands, and agrees that cooperation between service providers and Tribal governments is essential. However, as USTelecom’s petition makes clear, some of the further guidance provided by the Bureaus is problematic in scope and substance. Sprint urges the Commission to clarify that the further guidance is applicable only to carriers which are designated as an ETC by a Tribal authority, and which provide broadband service on Tribal lands as a condition to receiving CAF or Tribal Mobility Fund support. In the case of ETCs to which the guidance is applicable, the Commission should further clarify that the advice contained in the *Further Guidance PN* is just that – advice, and not a regulatory imperative.

2. The Further Guidance Should Not Apply to Non-Tribal ETCs

In the *Further Guidance PN* (para. 8), the Bureaus noted that the annual certification and compliance summary ETCs will be required to submit are “part of the new Connect America Fund reporting requirement.” Sprint interprets this guidance to mean that the Section 54.313(a)(9) reporting requirement applies only to CAF recipients which are serving a Tribal land in connection with the CAF support received,⁶ and urges the Commission to confirm that such interpretation is correct.

It makes no sense to impose a Tribal engagement requirement on carriers which do not receive any universal service support to provide service to a Tribal land,⁷ or which

⁶ Section 54.313(a)(9) applies “[t]o the extent the [USF] recipient serves Tribal lands....” Subsection 9 makes no reference to carriers that may be considering or planning to provide service to Tribal lands at some future point.

⁷ Thus, a carrier which is designated as an ETC in an area adjacent to a Tribal land (*e.g.*, along a highway close to a Tribal land) and which may have a small number of subscribers who reside on the Tribal land, but which does not receive USF support to provide service on the Tribal land, should not be subject to the Tribal engagement requirement or to the further guidance.

may only be “contemplating” requesting authorization to provide service on a Tribal land. A carrier that is not authorized to provide service on a Tribal land will not have documentation demonstrating compliance with Tribal business and licensing requirements as is mandated under Section 54.313(a)(9)(v)). Indeed, if a carrier is not currently serving a Tribal land and is not seeking to provide such service, requiring discussions with Tribal governments; mandating deployment, feasibility and sustainability planning; developing “culturally sensitive” marketing material; and engaging in rights-of-way, land use, siting, environmental and cultural preservation processes (Sections 54.313(a)(9)(i) through (iv)) are an unreasonable and unproductive use of both carrier and Tribal resources. As USTelecom states (Petition, p. 4), requiring discussions about broadband deployment plans would be of “no value” in the case of ETCs that will not be receiving support for broadband network deployments in a Tribal area.

The reporting requirements in Section 54.313(a)(1) through (8) might more readily be seen as applying to “any recipient of high-cost support.” But as discussed above, such is not the case with subsection 9. Therefore, the Commission should, as USTelecom has requested (Petition, pp. 2-3), explicitly state that the Tribal engagement obligation of subsection 9 does not extend to ETCs that do not provide service on Tribal lands as a condition to receiving Tribal Mobility Fund or CAF Phase II support.

3. The Further Guidance Should Be Recommended Rather than Prescriptive

USTelecom has requested (Petition, p. 3) that the Commission reconsider or clarify that where the Tribal engagement requirement applies, the *Further Guidance* “should not be considered auditable requirements but merely suggestions to guide ETC

activities.” Sprint agrees. The detailed list of topics to be discussed, the information to be provided, and the format of the meetings (*e.g.*, “live conversations” between “decision makers”) that are included in the *Further Guidance PN* are burdensome and were, as USTelecom pointed out (*id.*), published without notice and comment. While some Tribal ETCs may voluntarily choose to implement some or all of these engagement standards, other ETCs may find such standards to be excessively intrusive or incompatible with reasonable business practices. Therefore, rather than holding its further guidance to be prescriptive, the Commission should clarify that such guidance is recommended or advisory only. Insofar as Sprint is aware, there is no evidence to suggest that ETCs have not or will not engage in good faith negotiations with Tribal authorities, and the imposition of heavy-handed regulatory requirements here is unnecessary.

Respectfully submitted,

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